UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
--X

JOEL BOSH, AND BOSCHMUSIC INC., d/b/a/ BOSCH MUSIC

Plaintiffs,

- against -

EMI MUSIC U.S. LATIN; JOSEPH HERNANDEZ, individually, and d/b/a MELAZA MUSIC PUBLISHING,

Defendants.
--X

Case No.

JUDGE CASTEL

05 CV 7723

COMPLAINT

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CASHIERS

Plaintiffs Joel Bosh, professionally known as "Taino", and Boschmusic Inc., d/b/a/ Bosch Music ("BoschMusic"), by their attorneys Balber Pickard Battistoni Maldonado & Van Der Tuin, PC, and Juan H. Saavedra Castro, Esq., for their complaint against EMI Music U.S. Latin ("EMI") and Joseph Hernandez, individually, and doing business as Melaza Music Publishing ("Hernandez" and "Melaza", respectively), allege as follows:

1. This is an action for damages and injunctive relief alleging copyright infringements under 17 U.S.C. § 106 and violations of the Berne Convention for Protection of Literary and Artistic Works.

2. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338

(copyright claims) and 28 U.S.C. 1367(a) (supplemental jurisdiction).

3. Venue is proper in this district under 28 U.S.C. §1391 and §1400 because one or more of the defendants are found in the Southern District by themselves or through their agents inasmuch as they transact business in the Southern District or because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

THE PARTIES

4. Bosh and his publishing company, BoschMusic, are citizens and residents of the State of Florida, with their principal place of business in that State.

5. Upon information and belief, defendant Hernandez is a citizen and resident of the State of New York.

6. Upon information and belief, defendant Melaza is a d/b/a of Hernandez, with its principal place of business in the State of New York.

7. Upon information and belief, EMI is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Florida.

FACTS COMMON TO ALL CAUSES OF ACTION

8. Bosh is an artist, performer and music author and composer, professionally known as "Taino". Directly, and through his publishing company, BoschMusic, he is engaged in the business of selling and/or licensing the distribution and sale of his songs on phonorecords (as defined in 17 U.S.C. § 101, including, without limitation, compact discs).

9. Bosh is the owner of the exclusive rights under copyright for the words and music related to the song "Yo Soy Boricua" (the "Copyrighted Song"), such rights having been assigned to BoschMusic.

10. Bosh has applied for and received a Certificate of Copyright Registration from the Register of Copyrights for the Copyrighted Song, effective July 24, 1996.

11. The Copyright Office Performing Arts Registration number for the Copyrighted Song is Pau—2-091-562.

12. In accordance with 17 U.S.C. § 106, Bosh has the exclusive rights, among other things, to "reproduce the [Copyrighted Song] in copies or phonorecords," "to prepare derivative works based upon the [Copyrighted Song]," and to "distribute copies [of the Copyrighted Song] ... to the public."

13. Bosh is currently, and at all relevant times has been, the sole proprietor of all rights, title and interest in and to the copyright in the Copyrighted Song.

INFRINGING CONDUCT

14. Hernandez is a world-reknowned disc jockey who, upon information and belief, is knowledgeable about the several musical genres, including Hip-Hop and Urban Latino Music (such as as "reggaeton"). Hernandez is also a singer and performer and, upon information and belief, producer and licensor of phonographs, including the phonograph known as "The Reggaetony Album." Hernandez is also an author and composer, who publishes his musical compositions through a business entity known as Melaza.

15. EMI is engaged in the business of producing, manufacturing, distributing and marketing music and phonorecords.

16. Subsequent to the Copyrighted Song's effective copyright registration date, on or around June, 2005, Hernandez entered into a distribution agreement with EMI, whereby EMI agreed to manufacture, distribute and market a phonorecord (in various formats including compact discs) entitled "The Reggaetony Album" (the "EMI Phonorecord"), both in the United States, including Puerto Rico, and worldwide.

17. The EMI Phonorecord contains a song entitled "Pa' que tu lo sepas" (the "Unauthorized Song"), which is substantially similar to the Copyrighted Song.

18. The EMI Phonorecord also contains a printed insert which states that the "Unauthorized Song" was written by defendant Hernandez, and that Melaza holds the publishing rights to the "Unauthorized Song."

19. The printed insert in the EMI Phonorecord fails to attribute authorship of the Unauthorized Song to Bosh.

20. The "Unauthorized Song" has virtually the same title, utilizes exactly the same chorus, theme and format as "Yo Soy Boricua", and repeats verbatim the chorus and theme that appears in "Yo Soy Boricua", including the repeated use of the words "Yo Soy Boricua, Pa' Que Tu Lo Sepas". The infringed portion of the Copyrighted Song is the most important part of the work, which constitutes the "hook", responsible for the success of the song.

21. Upon information and belief, subsequent to the Copyrighted Song's effective copyright registration date, Hernandez actively promoted the Unauthorized Song worldwide via its use in his website, located at "www.tonytouch.com".

22. Neither EMI, nor Hernandez, nor any known affiliate, agent, or contractually related party of the same, has requested a license to produce, distribute, publicly perform, display, or otherwise use the Copyrighted Song or its lyrics, and neither Bosh nor BoschMusic has granted any such license.

23. Upon learning that the "Unauthorized Song", as contained in the EMI Phonorecord, had been produced, distributed, publicly performed, displayed and otherwise used in the United States, Bosh contacted Defendants or their affiliates and demanded that they:

(a) immediately cease and desist from any further reproduction, distribution or sales of the EMI Phonorecord;

(b) immediately cease all promotion of the Unauthorized Song;

(c) immediately recall all copies of the EMI Phonorecord that have been distributed, but have not been sold to individual retail customers;

(d) destroy all copies of the EMI Phonorecord and artwork that contain or refer to the Unauthorized Song;

(e) account to Bosh for all EMI Phonorecords and artwork that contain or refer to the Unauthorized Song that were pressed, printed, sold or destroyed;

(f) disgorge to Bosh all profits received as a result of the reproduction and distribution of the Unauthorized Song; and

(g) compensate Bosh for all losses he has suffered as a result of defendants' unlawful actions.

24. Despite this demand, upon information and belief, the EMI Phonorecord continues to be produced, distributed and marketed, and the Unauthorized Song continues to be publicly performed or displayed, in the United States and in numerous foreign countries, as caused by defendants or their affiliates.

25. Defendants have not paid any monies to Bosh for their unauthorized use of the Copyrighted Song nor accounted to Bosh for revenue and profits received from such use.

26. Upon information and belief, in addition to phonorecord format, the Unauthorized Song has been produced, distributed, and marketed, as caused by Defendants, in other formats, including but not limited to promotional videos.

27. Each production, distribution, and public performance or display of the words and music of the Copyrighted Song by Defendants constitutes a separate violation of plaintiffs' rights.

FIRST CAUSE OF ACTION
U.S. COPYRIGHT INFRINGEMENT
17 U.S.C. §106 --
UNLAWFUL REPRODUCTION, DISTRIBUTION,
PUBLIC PERFORMANCE, DISPLAY OF, AND PREPARATION
OF DERIVATIVE WORKS BASED UPON THE COPYRIGHTED SONG

28. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

29. Defendants' actions as alleged herein have violated Bosh's exclusive rights, as provided by 17 U.S.C. §106, to reproduce, distribute, publicly perform, publicly display, and prepare derivative works based upon the Copyrighted Song.

30. Defendants' actions as alleged herein, or some portion thereof, have been willfully done and with full knowledge of Bosh's copyright.

31. Defendants are responsible directly, vicariously, or contributorily for the unlawful copyright infringement described herein.

32. As a direct and proximate result of the foregoing acts, Bosh has been and continues to be irreparably injured.

33. Defendants are liable to plaintiffs under 17 U.S.C. § 504 for each act of infringement for actual and punitive damages and profits or, alternatively, statutory damages in an amount to be determined at trial, in an amount of no less than one hundred and fifty thousand dollars ($150,000).

SECOND CAUSE OF ACTION --
COPYRIGHT INFRINGEMENT
IN FOREIGN COUNTRIES NOT YET UNIDENTIFIED

34. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 27 as if fully set forth herein.

35. Defendants' actions as alleged herein have violated Bosh's exclusive rights to reproduce, distribute, publicly perform, publicly display, and prepare derivative works based upon the Copyrighted Song, as provided by the copyright laws of the foreign nations in which such acts occurred.

36. Defendants are responsible directly, vicariously, or contributorily for the unlawful copyright infringement described herein.

37. As a direct and proximate result of the foregoing acts, Bosh has been and continues to be irreparably injured.

38. Defendants are liable to plaintiffs for actual and punitive damages and profits for each act of infringement pursuant to the copyright laws of each of the foreign nations in which such acts occurred in an amount to be determined at trial.

THIRD CAUSE OF ACTION
FOR INJUNCTION AND SEIZURE

39. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 27, as if fully set forth herein.

40. Plaintiffs are entitled to a preliminary and permanent injunction under 17 U.S.C. § 502 et seq., and under the copyright laws of each of the foreign nations in which such acts occurred, to prevent or restrain further infringement of the copyrights in issue including, inter alia, the impounding, destruction and/or other reasonable disposition of all unauthorized copies and phonorecords made, used, or sold and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords were or may be produced.

FOURTH CAUSE OF ACTION
FOR ATTORNEYS FEES AND COSTS

41. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

42. Pursuant to 17 U.S.C. § 505, plaintiffs request that the Court order Defendants to reimburse plaintiffs for their attorneys' fees and costs incurred in prosecuting this action.

FIFTH CAUSE OF ACTION
FOR AN EQUITABLE ACCOUNTING OF PROFITS

43. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

44. Defendants are liable to plaintiffs for an equitable accounting of all profits related to Defendants' actions as described herein.

DEMAND FOR JURY TRIAL

45. Plaintiffs demand trial by jury of all issues so triable.

WHEREFORE, plaintiffs respectfully request that the Court enter judgment:

(a) On the first cause of action for compensatory and punitive money damages and profits or, in the alternative, statutory damages;

(b) On the second cause of action for compensatory and punitive money damages and profits;

(c) On the third cause of action for injunction and seizure;

(d) On the fourth cause of action for all attorneys fees and costs incurred in prosecuting this action;

(e) On the fifth cause of action for an equitable accounting of profits; and

(f) For any further relief the Court deems proper.

Dated: New York, New York
September 1, 2005

Balber Pickard Battistoni Maldonado &
Van Der Tuin, PC

By: ______________________________
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